

**LOCAL AGENCY FORMATION COMMISSION
COUNTY OF SAN BERNARDINO**

175 West Fifth Street, Second Floor, San Bernardino, CA 92415-0490
• (909) 387-5866 • FAX (909) 387-5871
E-MAIL: lafco@lafco.sbcounty.gov
www.sbclafco.org

DATE: NOVEMBER 8, 2004

FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer

TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #5 – LAFCO SC#243 – West Valley Water District
Out-of-Agency Service Agreement (Lytle Creek North Development
Project)

SUBMITTED BY:

West Valley Water District on behalf of property owner/developer

RECOMMENDATION:

- 1) Take the following actions for the environmental review for SC#243:
 - a. Certify that the Final Environmental Impact Report (EIR) and other related documents prepared by the County of San Bernardino for the Lytle Creek North Planned Development Project (SCH No. 99051013) have been independently reviewed and considered by the Commission and its Environmental Consultant;
 - b. Determine that the Final EIR for the Lytle Creek North Planned Development Project prepared by the County is adequate for the Commission's use as a CEQA Responsible Agency for its determinations related to LAFCO SC#243 indicating that no alternatives, other than those reviewed by the County, are to be considered and that the mitigation measures identified are the responsibility of the County of San Bernardino and others, and not the Commission and are self-mitigating through implementation of the adopted Conditions of Approval for the project;

- c. Adopt the Candidate Findings of Fact and Statement of Overriding Considerations as presented by the Commission's Environmental Consultant, as attached to the staff report; and,
 - d. Direct the Clerk of the Commission to file a Notice of Determination within five days.
- 2) Approve SC#243 authorizing the West Valley Water District to extend water service outside its boundaries to serve Master Tentative Tract No. 15900, a development project needing 3,315 equivalent development units of water service on APNs #0239-016-24, -32, -33, and -34 comprising approximately 641 +/- acres;
- 3) Adopt LAFCO Resolution #2852 setting forth the Commission's findings, determinations and approval of the agreement for service outside the West Valley Water District's boundaries.

BACKGROUND:

The West Valley Water District has submitted an application requesting that the Commission authorize it to provide water service outside its boundaries as permitted by Government Code Section 56133. The area to be provided service is the development project commonly known as the "Lytle Creek North Planned Development Project" (hereinafter Lytle Creek North PDP) encompassing approximately 647 +/- acres, of which 641 +/- are outside the District's existing boundaries. The development project is located southwesterly of the Glen Helen Regional Park and its Hyundai Pavilion, southerly of the area known as "Sycamore Flats" which abuts the National Forest boundary on the north, adjacent to the Cemex Sand and Gravel Operation and the County's Glen Helen Rehabilitation Center and Sheriff's facility to the east/southeast. The site is currently vacant land that burned during the Old/Grand Prix fires a year ago. Maps of the District's sphere of influence and the project location are included as Attachment #1.

The District, on behalf of the property owner, has submitted this request to provide service outside its boundaries as an interim step toward the provision of water service while its annexation application is in process with the Commission (annexation application identified as LAFCO 2971 filed October 19, 2004). A copy of the District's "will serve letter" and service contract application information is included as Attachment #2 to this report.

Existing land use approvals for the Lytle Creek North PDP processed through the County of San Bernardino include the following:

1. A preliminary development plan for a maximum of 2,466 residential units, 45 acres of commercial/office/light industrial uses with a school site, public facilities, and open space on 647 acres;
2. A general plan land use amendment from Resource Conservation (1 unit to 40 acres) and Floodway to Planned Development on 641 acres;
3. A tentative tract map (Tentative Tract #15900) for 34 parcels on 647 acres (identified as the Master Tract);
4. A General Plan Amendment to incorporate the proposed circulation system in the Circulation Element of the General Plan; and,
5. A Final Development Plan for the 34 parcels.

The County's review of these land use approvals has also included the preparation, circulation, and adoption of an EIR and the preparation and adoption of a Statement of Overriding Considerations. The processing of this project included litigation against the environmental documents adopted by the County. That litigation was settled in March 2002 by agreement between the property owner, Lytle Creek Development LLC, and litigation proponents, the Center for Biological Diversity and the San Bernardino Valley Audubon Society. The mountain of paperwork prepared for the processing of these land use applications has evaluated the impacts of the land use changes on the infrastructure systems, environment and other communities. LAFCO staff and LAFCO Environmental Consultant have participated throughout the environmental process, having responded to the Notice of Preparation of the EIR and commenting on the Draft EIR.

Over the last three plus years, the Commission has discussed the Lytle Creek North PDP on two separate occasions. The first discussion occurred in November 2001 and related to the Commission's authority to review development proposals that required the extension of new urban services into previously unserved territory (Government Code Section 56434). The Commission's discussion of the project related to the then-anticipated Conditions of Approval to be reviewed and considered by the County Board of Supervisors (copy of staff report included as Attachment #4). Within the discussion at that hearing was a review of the conditions related to the water provider for this development project, noting that the proposed Condition of

Approval required that the West Valley Water District (formerly known as the West San Bernardino County Water District) be the water purveyor (copy of the adopted County Conditions of Approval included as Attachment #3). One question that was identified in this review was the potential need to clarify the sphere of influence assigned the West Valley Water District to confirm that the entirety of the project was within the District's sphere.

In June 2004, the Commission conducted the municipal service review and sphere of influence update for the West Valley Water District. Included in the documents provided to the Commission, and the discussion of the District's sphere of influence, was information related to the Lytle Creek North PDP. This review material specifically discussed the impacts of the Lytle Creek North PDP on the District's Pressure Zone 7 and Pressure Zone 8 distribution systems (excerpt from Municipal Service Review Document prepared by Cotton/Bridges/Associates included as Attachment #5). The Commission reviewed and determined that the sphere of influence assignment within this northern portion of the District included the whole of the Lytle Creek North project and was confirmed.

At this time, the property owner of this project wishes to move to the next step in the development process which is the recordation of Master Tract #15900. In order to do so, it must comply with the Conditions of Approval required to occur prior to the recordation of the Tract. The following Conditions of Approval approved by the County are relevant to that process and the Commission's review of the service contract:

"Condition #129. The water purveyor shall be West San Bernardino County Water District, or as otherwise approved by the Local Agency Formation Commission."

*"Condition #136. Water Service. Prior to the approval of the first final subdivision map, **including the subdivision of the project site into specific planning areas, the Applicant shall submit and, when acceptable, the County shall accept a "will serve" letter from the water purveyor(s) from whom potable water will be supplied demonstrating**, to the satisfaction of the County, that sufficient water resources will be available to all phases of the proposed project in a manner and within a time period consistent with the demand for those resources..."* Emphasis added by LAFCO staff.

The Conditions of Approval adopted by the County Board of Supervisors, as noted above, require verification of water service provision by the West Valley Water District through a “will serve” letter prior to recordation of the master tract map, identified as Tract 15900. Pursuant to the Commission’s adopted definition of an out-of-agency service contract, a “will serve” letter is considered contract. The definition reads as follows:

*"Contract or agreement" shall mean a contract, agreement, **will-serve letter**, or other legal instrument, which requires or agrees to the delivery of service to property."*

Therefore, in order for the project to proceed to record Master Tract #15900, authorization of the out-of-agency service is required so that the will serve letter would be considered to be valid by the County. As noted above, the developer must show proof of his ability to connect to the District’s water infrastructure (County Conditions of Approval, Items #57, #128, #129 and #136), which will be the Commission’s resolution authorizing the will serve letter submitted by the District.

Applications processed for review of out-of-agency service contracts require the inclusion of information regarding all financial obligations for the extension of the anticipated services. In this case, the materials submitted by the Water District only include a copy of the feasibility study prepared by Lytle Development for the extension of service to its properties (dated December 2003). However, the materials included within the Municipal Service Review for the West Valley Water District identified the improvements to be funded by the developer for the Lytle Creek North PDP as outlined on Table 9, page 28 (included within the excerpt identified as Attachment #5 to this report). This information indicates that the cost to the developer will be \$13,420,000, while the total cost of the improvements is estimated to be \$23,248,000. The balance of the cost relates to necessary oversizing of facilities to serve other portions of the Pressure Zones and is to be funded by the District. Information is not provided regarding the future charges for water service as the service contract application assumes the annexation into the District will occur prior to actual residential water service to individual homeowners/business owners in the area.

The staff has reviewed this application against the criteria established by Commission policy and Government Code Section 56133. As with all matters coming before the Commission, the issues to be considered are the necessary government structure to provide the services needed based upon the land use approvals provided for the area. The County has provided land use approvals

for this area anticipating the development of 2,466 residential units with an anticipated population of approximately 7,000. LAFCO, in its review, is asked to provide for the most efficient and effective service delivery given that level of development. In the staff's view, the following determinations support the approval of this service contract as an interim measure while the annexation application is processed:

1. The area is within the sphere of influence assigned and confirmed for the West Valley Water District and is anticipated to become a part of that District in the near future as LAFCO 2971 is processed and completed.
2. On the basis of the sphere of influence determination in 1989, the District has planned to extend its facilities to serve this area. The District and Developer have jointly prepared the Water Facilities Feasibility Study for the Lytle Creek North Development Project, dated December 16, 2003, that specifies the requirements of both parties regarding future annexation, the financing of the extension of required water facilities for the provision of service by the developer, and the supplemental water supply needed to assure service to the site.
3. The area has been zoned for residential uses by the amendments to the County's General Plan and the adoption of the Preliminary and Final Development Plans for this project. The development application requires the connection to the District's water infrastructure, as identified in the adopted Conditions of Approval.

Based upon the determinations outlined above, the staff supports the authorization of the service contract to allow for compliance with the Conditions of Approval imposed by the County of San Bernardino that the water purveyor for this project is to be the West Valley Water District.

FINDINGS:

1. The area is within the sphere of influence of the West Valley Water District and is anticipated to become a part of the District through the processing and completion of LAFCO 2971 – West Valley Water District Annexation, which possesses 100% landowner consent.
2. The County's General Plan Amendment, Tentative Tract and Final Development Plan provide for a 34-lot master subdivision with approvals for a maximum of 2,466 residential units, an elementary school, commercial/office/light industrial development, a park site and other

ancillary uses. The County's review of the General Plan Amendment, Preliminary Development Plan, Master Tentative Tract Map #15900, Final Development Plan, etc. was approved on December 18, 2001. The approvals as outlined within the "Conditions of Approval" contain the requirement that the West Valley Water District shall be the water purveyor for the Lytle Creek North PDP (Conditions of Approval #57, #128, #129, and #136).

3. The authorization for service outside the boundaries of the West Valley Water District being considered is for the provision of water service to the 34-lot Master Tract for residential development within the unincorporated area of the County. This authorization will remain in force for these anticipated parcels in perpetuity, or until such time as the area is annexed through the processing of LAFCO 2971 – West Valley Water District Annexation (Lytle Creek North).
4. The costs for service extension, by policy of the West Valley Water District, are to be borne by the developer of the project. Table #9 of the Municipal Service Review Factors submitted in June 2004 by the West Valley Water District estimated a cost of \$13,420,000 for the landowner/developer to provide for the potable water system facilities, the supplemental supply for average daily demand, and the facility charges. A revision of the Water Facilities Feasibility Study for the Lytle Creek North PDP (dated December 16, 2003) is currently in process with the District to update and revise the costs figures and facility design criteria.
5. On December 18, 2001, acting as the CEQA lead agency, the County certified the Final Environmental Impact Report for the Lytle Creek North PDP and adopted Findings of Fact and a Statement of Overriding Considerations. Those CEQA approvals were litigated by The Center for Biological Diversity and the San Bernardino Valley Audubon Society and ultimately resulted in a settlement agreement.

The Commission's Environmental Consultant, Tom Dodson and Associates, has reviewed the County of San Bernardino's Final EIR and determined that it is adequate for the Commission's review as a CEQA responsible agency. A copy of the County's Final EIR and Findings and Statement of Overriding Considerations was provided to Commission members on October 20, 2004. In addition, Mr. Dodson has provided a Candidate Findings of Fact and Statement of Overriding Considerations

for the Commission's use (Attachment #6). The necessary actions to be taken by the Commission, as a responsible agency, include the following:

- a. Indicate that the Commission has reviewed and considered the Final EIR, Findings of Fact and Statement of Overriding Considerations and related actions by the County of San Bernardino.
- b. Determine that the Final EIR for the Lytle Creek North PDP is adequate for the Commission's use in making its decision related to the out-of-agency service contract, indicating that no alternatives, other than those reviewed by the County, are to be considered and that the mitigation measures identified are the responsibility of the County of San Bernardino and others, and not the Commission, and are self-mitigating through implementation of the adopted Conditions of Approval.
- c. Adopt the Candidate Findings of Fact and Statement of Overriding Considerations as presented by the LAFCO Environmental Consultant.
- d. Direct the Clerk to file a Notice of Determination within five days and find that no further Department of Fish and Game filing fees are required by the Commission's approval since the County, as lead agency, has paid said fees.

KRM:

Attachments:

1. Sphere of Influence Map and Maps of Project Area
2. West Valley Water District Service Contract Application, Plan for Service, and Water Facilities Feasibility Study
3. County Conditions of Approval for Lytle Creek North Planned Development Project Tract No. 15900 Adopted December 18, 2001
4. November 9, 2001 Staff Report – Review of Extension of New Urban Services Into an Unincorporated Area – Lytle Creek North Planned Development Project
5. Excerpt from West Valley Water District Draft Municipal Service Review Document – dated June 4, 2004
6. Response from Tom Dodson, Tom Dodson and Associates, with Candidate Findings of Fact and Statement of Overriding Considerations

7. Draft Resolution #2852